



August 23, 2002

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2002-4701

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167562.

The Mesquite Police Department (the “department”) received a request for information relating to a traffic accident. The department claims that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. The department also asks whether it may release the requested information under section 550.065 of the Transportation Code. We have considered the department’s arguments and have reviewed the submitted information.

We begin by addressing the department’s question regarding section 550.065 of the Transportation Code. Section 550.065 is applicable only to information held by the Texas Department of Public Safety or another governmental entity that relates to a motor vehicle accident reported under chapter 550 of the Transportation Code or section 601.004 of the Transportation Code. *See* Transp. Code § 550.065(a); *see also id.* § 550.064 (officer’s accident report). An accident report is privileged and confidential under section 550.065(b), except as provided by section 550.065(c). The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282-83 (codified at Transp. Code § 550.065(c)(4)).

The department states that the requestor has provided the accident information required by section 550.065(c)(4). However, the department also informs us that no report was filed with regard to the accident in question. We therefore conclude that section 550.065 of the Transportation Code is not applicable in this instance.

We next note that the department has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part:

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

. . .

(B) a copy of the written request for information[.]

Gov't Code § 552.301(e)(1)(B). Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

In this instance, we did not receive a copy of the request for information. Thus, the department has not complied with section 552.301 in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Sections 552.101 and 552.130 of the Government Code, which the department raises, can provide compelling reasons for non-disclosure under section 552.302. Therefore, we will address the department's arguments under these sections.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. The department raises section 552.101 in conjunction with section 772.118 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency

communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The department indicates that it obtained a responsive street address and telephone number from a 911 service supplier. The department claims that this information is confidential under section 772.118 of the Health and Safety Code. The department does not state, however, whether the City of Mesquite is part of an emergency communication district that was established under section 772.118. Assuming, however, that the city is part of such a district, we conclude that the address and telephone number in question are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(2). The Texas license plate number that appears in the submitted information must be withheld from disclosure under section 552.130.

In summary, assuming that the City of Mesquite is part of an emergency communication district established under section 772.118 of the Health and Safety Code, the address and telephone number of a 911 caller obtained from a 911 service supplier are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.118. The Texas license plate number is excepted from disclosure under section 552.130 of the Government Code. The department must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

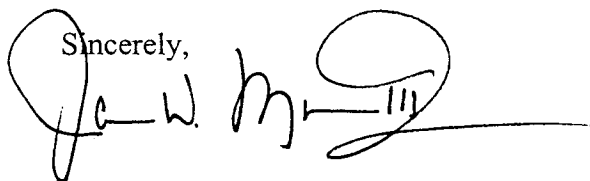
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 167562

Enc: Submitted documents

c: Ms. Sharon Bruner
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(w/o enclosures)